

**Testimony of**  
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**To**  
**The Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs**  
**Committee on Government Reform**  
**United States House of Representatives**  
**On**  
**“What is the Bush Administration’s Record on Regulatory Reform?”**  
**November 17, 2004**

Chairman Ose and members of the Subcommittee, thank you for the opportunity to testify today on this important topic.

Over 60 agencies have a hand in federal regulatory policy, ranging from the Environmental Protection Agency to the Securities and Exchange Commission. Together, they enforce over 144,000 pages of rules, with purposes and impacts as varied as the agencies themselves.

**Cost of regulation.** Some of these regulations are justified, many are not. Nevertheless, each comes at a cost: a "regulatory tax" imposed on all Americans. While Americans do not file regulatory tax forms on April 15, and there is no bottom line indicating how much they pay for these regulations, these regulatory taxes are staggering by almost any measure. According to the Office of Information and Regulatory Affairs (OIRA) federal regulations could be costing Americans some \$380 billion. This numbers is low compared to estimates prepared by economists Mark Crain and Thomas Hopkins

for the Small Business Administration.<sup>1</sup> In 2000, Crain and Hopkins concluded that regulations cost Americans \$843 billion (over \$8,000 per household). This is almost half of the amount collected in federal taxes and close to the \$1 trillion paid in personal income taxes that year. Put another way, the total is almost a tenth of America's gross domestic product and more than half of the manufacturing sector's output.

**Bush Administration actions.** To its credit, the Bush Administration has recognized the problem of excessive regulation. Over the past four years, OIRA has been revitalized – taking a harder look at proposed new regulations, and implementing new standards for agency analyses of new rules. In regard to small business, the President signed a new executive order strengthening requirements for agencies to assess the small business impact of proposed new rules, and the expanding role of the SBA's Office of Advocacy in that process.

How well have these efforts succeeded in controlling regulatory costs? The question is a difficult one to answer, because of the lack of any explicit, complete, and accurate way to track changes in regulatory costs from year to year. However, according to the measures that are available, President Bush has done well at limiting adoption of costly new regulations, and in fact has had a better record on that score than his recent predecessors, including the first President Bush. However, the Administration has a much weaker record in eliminating or reducing the cost of existing rules. As a result, the total amount of regulation, by most measures, continues to rise.

**Estimated costs of new regulations during Bush years.** I would like to focus today on two specific measures of regulatory changes. The first is the dollar cost of new major rules, based on benefit-cost analyses performed by executive branch agencies. According to these cost estimates, as reported by OIRA, the average annual cost of new rules in the Bush Administration was just under \$1.5 billion in its first three years. By contrast, the annual costs totaled \$5.7 billion under President Clinton and \$8.5 billion under the first Bush Administration.

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<sup>1</sup> W. Mark Crain and Thomas D. Hopkins, "The Impact of Regulatory Costs on Small Firms: A Report for the Office of Advocacy, U.S. Small Business Administration," RFP No. SBAHW-00-R-0027, 2000, at [www.sbaonline.sba.gov/advo/research/rs207tot.pdf](http://www.sbaonline.sba.gov/advo/research/rs207tot.pdf) (September 13, 2004).

This is strong evidence that the Bush Administration has been keeping regulatory costs under control--or at least avoiding excesses. Much of the difference seems to be fewer extremely costly rules. Only one rule costing over \$1 billion was promulgated during the first two years of the current Bush Administration. By contrast, there were seven such rules in 1992 alone during the first Bush Administration.

These statistics, however, should be used with caution. Despite efforts to expand the use of benefit-cost analysis, many major rules are still adopted without a quantification of costs. In fiscal 2003, at least 23 major rules were promulgated by federal agencies, but costs were quantified for only 15. Moreover, the numbers are based on analyses performed by regulatory agencies themselves as part of their justification for their rules. Although the analyses were approved by OIRA as part of the review process, they do not present a truly independent assessment of regulatory costs. Moreover, although OIRA recently took steps to standardize the methodologies and assumptions used in these studies, most are far from uniform, making it difficult to aggregate the numbers meaningfully, much less judge their quality.

Lastly, it should be noted that the benefit-cost analyses do not gauge decreases in regulatory burdens. At best, if a rule is eliminated, the cost is scored as zero. It therefore is not helpful in determining whether regulatory costs are increasing or decreasing on balance.

**Number of new regulations.** Other measures, however, indicate that the total burden is still increasing. Based on my own review of each major rules promulgated from 1997 to date, only a small portion of the rules adopted each year are deregulatory, although the portion has been slightly higher during the Bush Administration. This review was conducted by reviewing summaries of each major rule, and categorizing each as largely regulatory or largely deregulatory. These evaluations were based primarily on summaries of each major rule summaries and of the economic impact analyses of those rules, as provided by the GAO to Congress. This information was supplemented where necessary by consultation with experts in specific fields. If a rule's effect was not

primarily to increase or decrease regulatory burdens, or if its effects were so mixed as to make categorization impossible, it was not included.

Of the 169 rules reviewed, 39 (about 23 percent) decreased regulatory burdens. Of the 106 regulations from the Clinton Administration, 27 (22 percent) were deregulatory.<sup>2</sup> The Bush Administration was only slightly more deregulatory, with 12 of 48 rules (25 percent) decreasing regulatory burdens.

Over one-third of all categorized rules (60 of the 169 rules) were promulgated by independent agencies and thus were outside the OMB regulatory review process. The overwhelming majority of these were attributable to two agencies: the FCC and the SEC.

Interestingly, far larger portions (about 50 percent) of independent agency regulations were deregulatory. In fact, the FCC had more deregulatory actions than regulatory actions, a distinction shared only with the Nuclear Regulatory Commission, another independent agency.

The reason for the higher percentage of deregulatory actions at these independent agencies is unclear. One factor may be that both the FCC and SEC administer 1930s-era economic regulations that have been undergoing significant change. The FCC's deregulatory record, in fact, was due largely to proceedings liberalizing radio spectrum rules.<sup>3</sup> Moreover, it should be noted that regardless of the deregulatory actions of the independent agencies, they are still a major source of new regulation, accounting for about 25 percent of all rules that increased burdens.

When independent agency rules are excluded, the difference between the Clinton and Bush Administrations' regulatory records becomes much more stark. Less than 7 percent of rules by executive branch agencies during the Clinton years were deregulatory. By contrast, some 21 percent of such rules during the Bush years have reduced burdens.

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<sup>2</sup> For the purposes of this analysis, rules reported by the GAO through March 2001 were attributed to the Clinton Administration.

<sup>3</sup> This analysis does not include two of the most controversial FCC regulatory actions: reform of media ownership laws and the modification of telephone competition rules. Because both stem from the Telecommunications Act of 1996, they were not included in the GAO database.

This is a significant difference. Yet increases in regulations have still outnumbered decreases by more than three to one.

The sharpest contrast between the two Administrations is in the number of pro-regulatory actions, with the Bush Administration adopting just over seven major rules per year that increased burdens versus over 20 per year under Clinton. Thus, President Bush has not reversed the growth of federal regulation, but he has slowed it substantially.<sup>4</sup>

Of course, counting regulatory and deregulatory rulemaking does not show the full regulatory picture. Many key questions involve not whether to regulate or to deregulate, but rather how and how much. For instance, the FCC's 2002 decision modifying its rules on telephone competition was virtually ordered by a court. Relaxing the existing rules was a given. The real battle was on how much to reform. The final, controversial decision was technically deregulatory but was largely a victory for the pro-regulatory side because it kept key provisions in place.

Second, counting only the number of actions hides the actual impact of each decision: A rule costing \$100 billion is weighed the same as one costing \$1 billion. As a result, many important rulemakings--such as the virtual repeal in 2003 of regulations on airline computer reservation systems--are not reflected in these figures. And rulemakings with impacts of less than \$1 billion are not counted in my analysis.

**Recommendations for reform.** What then, can be done to curb unnecessary regulation? Several proposals are pending in Congress that would move us in the right direction. The full Government Reform Committee earlier this year reported H.R. 2432, by Chairman Ose. This legislation is primarily aimed at improving regulatory accounting – the calculation of the costs and benefits of regulation. Among other things, the legislation requires each agency to report to OMB each year on the costs and benefits of its regulations, and provides for a pilot program on “regulatory budgets.”

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<sup>4</sup> A fuller description of this and other measures of regulatory trends can be found in James L. Gattuso, “Reining in the Regulators: How Does President Bush Measure Up,?” Heritage Foundation Background No. 1801, September 28, 2004 (<http://www.heritage.org/Research/Regulation/bg1801.cfm>).

Steps to improve the valuation and reporting of the costs and benefits of regulation are much needed. Despite improvements over the past few years in the federal government's ability to assess such costs and benefits – due in large part to efforts by OIRA – the information produced by regulators on the impact of their regulations is still incomplete, inconsistent, and often unreliable. A large number of major regulations are routinely adopted without a quantification of both costs and benefits. As a result, even though OIRA is required by law to report annually on the costs and benefits of regulation, those numbers actually cover only a small portion of regulatory activity. Policymakers and consumers deserve to be told more about the costs being imposed on them by federal regulators. Requirements, such as those in H.R. 2345 to expand analysis and reporting of costs and benefits, could be beneficial.

In addition, there are a number of other steps that can be taken to ensure that the full costs and consequences of regulation are weighed as rules are considered. Among these:

- **Strengthening the Office of Information and Regulatory Affairs.** OIRA has been reinvigorated during the current Bush Administration, playing an active role in consideration of new rules and ensuring that their full costs and benefits are considered before they are promulgated. However, OIRA is still badly outgunned in regulatory battles, with over 4,300 regulatory agency staffers for every OIRA staffer. OIRA should be provided with additional resources to do its job better.<sup>5</sup>
- **Establishing a Congressional Regulatory Analysis Office.** A congressional office charged with providing Congress with information on the cost and impact of regulation--and any alternatives--would provide another independent source of regulatory analysis. This new office could be modeled on the Congressional Budget Office, which provides Congress with information on spending programs

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<sup>5</sup> Any additional funding necessary to implement this and other recommendations should be reallocated from the approximately \$30 billion now budgeted annually to federal regulatory agencies, to avoid a net increase in federal spending.

and acts as both a complement to and a check on the Office of Management and Budget.

➤ **Establishing a regulatory review office in each regulatory agency.**

Consideration of the costs of regulation should not begin when a proposal leaves an agency, but should take place within an agency as well. However, to be effective, this review should be from outside the specific office or bureau developing the policy. Therefore, each agency should have its own regulatory review office that is structurally separate from the units originating the rules and that examines all important agency rules before they are endorsed by the agency.

➤ **Designating "regulatory reform czars" at each agency to identify unneeded regulations.** Often, the best way to ensure that an issue is considered is to make a specific individual responsible for it. In 1992, as part of the first Bush Administration's 90-day regulatory review initiative, each agency was required to designate an officer, informally known as a "regulatory czar," to identify and eliminate unnecessary agency regulations. No new staff positions were created because the individuals typically were the general counsels or policy directors of the agencies involved. (In the future, such officers could be heads of agency regulatory review offices.) These officers were asked to spearhead efforts to reduce regulation at their agencies, meeting regularly with the Vice President to report on progress. Certainly, not every one produced a success story, but some did become zealous advocates of reform inside their agencies.

➤ **Requiring independent agencies to submit cost-benefit analyses to OIRA.**

Independent agencies -- such as the Federal Communications Commission and the Securities and Exchange Commission -- produce a substantial share of the major

rules finalized each year. The overall impact of these agencies is even greater because they cover some of the economy's most dynamic and vital sectors. Yet their rules are not subject to OIRA review before they are promulgated, and only rarely are their costs and benefits formally analyzed. This problem could be resolved by subjecting independent agency rules to the OIRA review process. If that cannot be done, they should at least be required to prepare cost-benefit analyses of all planned significant rules and to forward the analyses to OIRA for non-binding review.

**Conclusion.** In summary, while President Bush has done better than many of his predecessors in limiting new regulations, less has been done to eliminate existing, unneeded rules. The Administration should act to ensure that the growth of the regulatory burden on Americans is not just slowed, but reversed.

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